IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 246 OF 1997.

The Commissioner of Income-tax ... Applicant.

V/s.

M/s Vulcan Level Ltd. ... Respondent.

Shri Parag Vyas with Shri Ashok Kotangale and A.S. Rao for the applicant.

Shri Pramod Vaidya i/b S.N. Inamdar for the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 17.10.2005.

P.C. :

. By this reference under section 256(1) of the Income tax Act, 1961, the Income Tax Appellate Tribunal has referred the following substantial question of law for the opinion of this Court:

> . "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the assessing officer to compute the average total allowance per person basis and notper trip basis for the purpose of computing disallowance under Rule 6 D of the I.T. Rules?" under Rule 6D should be computed with reference to the total number of trips undertaken by each employee during the year and not the per person per trip basis."

. Learned Counsel for the parties agreed that the above question is already answered by the Division Bench of this Court in the case of **C.I.T. vs. Aorow India Ltd. reported in (1998) 229 ITR**

325. This Court while considering the above question, which centred around interpretation of Rule 6 D ruled as under:

> . The above interpretation ours get support from clause (b) of sub- rule(2) of rule 6 D as substituted in 1992. Under the substituted clause (b) also, the ceiling is on the expenditure incurred on travelling (other than the expenditure on travel) including hotel expenditure and allowances "per day". If the expenditure does not exceed RPS. 1500/- per day, it is allowable in full. If it exceeds RPS.1500/- plus 50 percent (75 per cent?) of such excess expenditure. This clearly goes to show that the allowance is to be calculated in the light of the actual expenditure incurred per day."

. In view of the above, the computation has to be made in accordance with rule 6D as illustrated in the said judgment wherein the question referred to was answered against the assesses and in favour of the Revenue. For the reasons recorded in the said judgment the matter is remitted back to the Tribunal to recompense the amount allowable as a deduction under section 37(3) of the Act read with rule 6 D of the rules correctly in the lines indicated in the said judgment. In this view of the matter, reference is answered against the assessee and in favour of the revenue.

. Reference stands disposed of with no order as to costs.